Union de Trabajadores de Muelles, Local ILA 1740, AFL–CIO *and* Union de Empleados de Muelles de Puerto Rico, Local 1901, ILA, AFL–CIO *and* Luis A. Ayala Colon Sucrs., Inc. and Asociacion de Navieros de Puertos Rico a/k/a Puerto Rico Shipping Association. Cases 24–CD–20 and 24–CD–21

July 15, 1998

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS FOX AND BRAME

The charges in this Section 10(k) proceeding were filed on May 31, 1996, by Luis A. Ayala Colon Sucrs., Inc. (the Employer), and Asociacion de Navieros de Puerto Rico a/k/a Puerto Rico Shipping Association (the Shipping Association), alleging that the Respondents, Union de Trabajadores de Muelles, Local ILA 1740, AFL–CIO (Local 1740), and Union de Empleados de Muelles de Puerto Rico, Local 1901, ILA, AFL–CIO (Local 1901), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing or requiring the Employer and/or the Shipping Association to assign certain work to employees each represents rather than to employees represented by the other Local. The charges were consolidated and a hearing was held in this proceeding on June 24 through 28 and July 1 and 3, 1996, before Hearing Officer Antonio F. Santos.

Upon the close of the hearing, the proceeding was transferred to the Board. Thereafter, the Employer and the Respondent Unions filed briefs.

The Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that Luis A. Ayala Colon Sucrs., Inc., the Employer, is a Puerto Rico corporation engaged in the loading and unloading of marine vessels in Puerto Rico and a member of the Shipping Association, a multiemployer group that represents the Employer and nine other employer-members for the purposes of collective bargaining.[1] Annually, in the course of its business operations, the Employer derives gross revenues in excess of $500,000, and purchases and receives materials and services in excess of $50,000 from vendors located outside the Commonwealth of Puerto Rico and causes them to be delivered to their places of business in the Commonwealth of Puerto Rico.[2] The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties stipulated, and we find, that Locals 1740 and 1901 are both labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer is engaged in the loading and unloading of marine vessels in San Juan and Ponce, Puerto Rico. It also ''strips'' or empties cargo containers brought into port on ships and maintains yards and warehouses for storing material to be loaded onto ships as cargo or to be picked up or delivered by customers. The Employer has been in business for over 30 years and has been, since at least 1984, a member of the Shipping Association. The Shipping Association has had collective-bargaining agreements with Locals 1740 and 1901 since at least 1984, the most recent of which were to expire on September 30, 1996. As a member of the Shipping Association, the Employer is a party to those agreements.

The Employer's worksite is divisible into two main areas: the dock and the yard. Pursuant to Local 1740's collective-bargaining agreement with the Shipping Association, employees represented by Local 1740 perform work on the docks for the Employer unloading and loading vessels, in classifications including winchmen, stevedores on board, slingmen, longshoremen ashore, motormen, coopers, waterboys, and signalmen. Motormen represented by Local 1740 operate mechanical equipment on the docks, including cranes, fingerlifts, and top loaders, to load cargo directly onto vessels and to unload cargo from the ships and place them on vehicles which take the cargo to the yard. Employees represented by Local 1740 also strip containers.[3] Pursuant to Local 1901's collective-bargaining agreement with the Shipping Association, employees it represents perform work for the Employer in the yard as employees delivering and receiving cargo, enrollers and paymasters, dock janitors, maintenance personnel (including mechanics, welders, electricians, gasoline

[1] The other members of the Shipping Association include the Antilles Shipping Association, Caribe Shipping Company, Inc., Island Stevedoring, Inc., Intership, Inc., Costa Line, Inc., Leopoldo Fontanellas, Inc., Princess Cruises, Inc., Continental Shipping, Inc., and Ocean Stevedoring, operating in various ports in Puerto Rico.

[2] The parties also stipulated that all other employer-members of the Shipping Association are engaged in the loading and unloading of marine vessels throughout Puerto Rico and that, during the past calendar year, each of them has derived gross revenues in excess of $500,000, and purchased goods and materials in excess of $50,000 outside of Puerto Rico, and caused them to be delivered to their places of business in Puerto Rico.

[3] The evidence reflects that the Employer is the only member of the Shipping Association that performs stripping work.

expenders, and other similar positions), gatekeepers, and tally clerks.

About five additional employees operate mechanical equipment in the yard to unload cargo from or load cargo onto the vehicles, stack cargo, and take it from and place it onto customers' vehicles on land. The Employer has not recognized either Local as representing these employees for this work and has made no dues deductions for that work.[4] However, the Employer has made dues deductions to Local 1901 for one employee, Carlos Santana, who has performed work that is undisputedly within the jurisdiction of Local 1901 and has also operated the fingerlift in the yard. When employees are not loading or unloading the vessels or stripping containers, the only employees working for the Employer are represented by Local 1901.

In early 1996, each Local claimed that employees it represented were entitled to perform the disputed work and, after discussing the matter, were unable to reach agreement. On April 17, 1996,[5] Local 1901 wrote to all Shipping Association members, requesting compliance with their agreement by recognizing that the work performed by all of their employees, except those engaged in the loading and unloading of vessels, was work that employees represented by Local 1901 should perform. On May 28, Local 1740 wrote to Shipping Association members stating that it represented all ''motormen,'' including those employees who operate mechanical equipment in the yard, demanding compliance with the agreement's union-security clause, and threatening to stop all work unless employees represented by Local 1740 operated the mechanical equipment. On May 29, Local 1740's president, Jorge Aponte, informed employees at the Employer's San Juan facility that the disputed work was Local 1740 work and that they could not perform the work unless they were employees whom Local 1740 represented. Aponte told the employees in the presence of a manager of the Employer that he would make sure that any employee not represented by Local 1740 who attempted to perform the disputed work would not get on any other equipment. On May 30, Local 1901 wrote the Employer that four employees, who operated mechanical equipment in the yard, had signed dues-checkoff authorization cards for Local 1901 and requested that it make the appropriate deductions from their pay. On May 31, the Employer wrote its employees that Local 1740 was threatening to paralyze its operations unless employees represented by it performed the disputed work and that the Employer accordingly felt compelled to terminate the employment of employees not represented by Local 1740. As a result of Aponte's threat, the Employer discharged most of the employees then performing the disputed work, and since June 3, the disputed work has been performed by employees represented by Local 1740.

B. *Work in Dispute*

The disputed work involves the operation of mechanical equipment, including top loaders, shifters, fingerlifts, side picks, and reach stackers, when that equipment is used in the yard and when it is used to receive and deliver containers on land.

C. *Contentions of the Parties*

The Employer and the Shipping Association contend, and Locals 1901 and 1740 do not dispute, that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. The Employer and the Shipping Association argue that the work in dispute should be awarded to employees represented by Local 1740 based on their collective-bargaining agreement with Local 1740, economy and efficiency of operations, employer preference, employer and industry past practice, and relative skills of the employees. Local 1740 argues that the work should be awarded to employees it represents because employees operating mechanical equipment in the yard are ''motormen'' and are therefore covered by its collective-bargaining agreement with the Shipping Association and the Employer, and that employees it represents are more skilled to operate the mechanical equipment than employees represented by Local 1901.

Local 1901 contends that, while Local 1740 represents employees loading and unloading vessels and stripping cargo, Local 1901's collective-bargaining agreement with the Shipping Association and the Employer provides that it represents all employees who work in the yard and that employees operating mechanical equipment in the yard are employees ''receiving and delivering cargo,'' as set forth in that agreement. It also asserts that the Employer is obligated by that agreement to negotiate with Local 1901 over all phases of its operation except the loading and unloading of vessels. Local 1901 also argues that the employees who performed the work prior to the dispute are fully able to perform the work, that those individuals chose to have Local 1901 represent them, and that an award of the disputed work to employees represented by Local 1740 would result in a loss of employment for the employees represented by Local 1901 who have previously performed the disputed work. Finally, it asserts that industry practice is mixed, as employees performing similar work at Ocean Stevedoring, one other employer-member of the Shipping Association, are represented by Local 1901.

[4] Since the advent of the present jurisdictional dispute, the Employer has used employees represented by Local 1740 to perform this work. Many or most of the Employer's employees belong to both Locals and dues are deducted and provided to either Local depending on the nature of the work they are performing.

[5] All dates hereafter are in 1996 unless otherwise noted.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute. In this case, we find reasonable cause to believe that Local 1740 threatened the Employer with an object of forcing it to assign the disputed work to employees it represents rather than to employees represented by Local 1901.[6] Thus, Local 1740 does not dispute that by letter dated May 28, 1996, it threatened the Employer that it would stop all work unless the disputed work was performed by employees it represented and that, on May 28, 1996, Aponte, Local 1740's president, visited the Employer's facility in San Juan and informed the employees performing the disputed work that this work belonged to employees represented by it and that if they continued to perform the disputed work, he would make sure that that they would not get on any other equipment. We therefore find reasonable cause to believe that Local 1740 violated Section 8(b)(4)(D).[7]

No party contends and the record does not show that an agreed-upon method for the voluntary adjustment of the dispute exists within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before us for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

There is no evidence that either Local 1901 or Local 1740 has been certified as the exclusive collective-bargaining representative of any of the Employer's employees. However, the Employer, as noted above, through its membership in the Shipping Association, is signatory to collective-bargaining agreements with both labor organizations.

The recognition article of Local 1740's relevant collective-bargaining agreement with the Shipping Association, and through it, with the Employer, provides that the Shipping Association recognizes Local 1740 as the exclusive representative of the existing unit of longshoremen and states that the rotational list of the Ponce location includes ''motormen.'' The evidence reflects that the motormen represented by Local 1740 operate mechanical equipment to load and unload vessels and that they operate some of the same type of equipment that is used in the yard, such as toploaders and fingerlifts.

The recognition article of Local 1901's relevant collective-bargaining agreement with the Shipping Association and the Employer recognizes Local 1901 as the exclusive representative of employees engaged in the delivery and receipt of cargo, checkers and checker-paymasters, dock janitors, maintenance personnel, including mechanics, welders, electricians, gasoline expenders, and other similar positions, gatekeepers, and tally clerks. Article XIII sets wages and provides that positions covered in the ''delivery and receipt of cargo'' include delivery and receiving clerk, cargo inspector ashore and aboard, pier stowage inspector, stamping and utility clerk (and assistant), commodity clerk, tally clerk, gateman, and window clerk.

The evidence does not show that the job duties of Local 1901's members engaged in the delivery and receipt of cargo for the Employer, as set forth in the collective-bargaining agreement and as reflected in practice, include the operation of mechanical equipment. As Hernan Ayala Parsi, the Employer's executive vice president, and vice president of the Shipping Association and a member of its bargaining committee, testified, these individuals primarily are clerks or ''checkers'' who prepare paperwork, including receipts and reports reflecting the amount and nature of cargo being delivered to or accepted from customers.[8] Accordingly, we find that this factor favors an award of the disputed work to employees represented by Local 1740.[9]

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[6] Despite references in the record to each Union's demand that the Employer comply with the union-security clause in its contract, we are satisfied that the dispute concerns two separate groups of employees and is not simply a dispute over which Union will represent and collect dues from a single group of employees. Compare, *Glass & Pottery Workers Local 421 (A-CMI Michigan Casting Center)*, 324 NLRB No. 117 (Oct. 10, 1997) (notice of Sec. 10(k) hearing quashed because the dispute was representational in nature rather than a true jurisdictional dispute involving different groups of employees). See generally *Carey v. Westinghouse Corp*., 375 U.S. 261, 268 (1964) (noting distinction between work assignment disputes and representational disputes).

[7] Accordingly, we find it unnecessary to determine whether reasonable cause exists to believe that Local 1901 violated Sec. 8(b)(4)(D).

[8] Jose Oller, the vice president of the Shipping Association, president of its bargaining committee, and president of Caribe Shipping, another member of the Shipping Association, also testified that Local 1901's work is of a clerical nature.

[9] Local 1901 also contends that the work in dispute is covered by its collective-bargaining agreement based on the language in the arti-

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2. Employer preference

The Employer's stated preference is for the disputed work to be performed by employees represented by Local 1740 as that Local represents the Employer's other mechanical equipment operators. Accordingly, this factor favors an award of the disputed work to employees represented by Local 1740.

3. Employer past practice and gain or loss of employment

The evidence shows that in the past the Employer has had about five employees performing the disputed work, four of whom were not represented by any labor organization while performing that work. The remaining employee, Carlos Santana, who has worked for the Employer for about 14 years, operates the finger lift, receives and dispatches cargo, and works as a utility clerk. During the periods in which Santana has operated the fingerlift as well as performed his other duties, the Employer has deducted dues from Santana's pay for Local 1901. The evidence indicates that this situation arose because Santana was represented by Local 1901 while working for another employer, which was purchased by the Employer. Because of Santana's unique circumstances and the personal nature of his dues deduction arrangement, we find that this evidence is insufficient to establish that past practice favors an award of the disputed work to employees represented by Local 1901. We accordingly find that the factor of the Employer's past practice is not helpful in determining the dispute.

As noted above, Local 1901 contends that an award of the work in dispute to employees represented by Local 1740 would result in a loss of employment for employees represented by Local 1901 who have previously performed the work. Although several of the employees performing the disputed work were terminated as a result of the assignment of work to employees represented by Local 1740 and the terminated employees were seeking representation by Local 1901, they were not in fact represented by Local 1901 while performing the disputed work. We find that this factor does not favor an award of the work in dispute to employees represented by Local 1901.

4. Area and industry practice

The evidence shows that, of the nine other members of the Shipping Association, all of whom are covered by the same collective-bargaining agreement, eight of them use employees represented by Local 1740 and one, Ocean Stevedoring, uses employees represented by Local 1901 to operate mechanical equipment in the yards. We find that this factor tends to favor an award of the disputed work to employees represented by Local 1740.[10]

5. Relative skills

The evidence indicates that Local 1740 supplies a substantial number of employees it represents who are trained and experienced in the operation of mechanical equipment to the Shipping Association's member employers. The disputed work requires essentially the same skills as the work performed by employees represented by Local 1740 whom it has trained as motormen and who operate the same or similar heavy equipment. Employees represented by Local 1901 have demonstrated the skills necessary to operate mechanical equipment at Ocean Stevedoring and one of the Employer's employees, Santana, has been represented by Local 1901 while performing motorman duties under the circumstances discussed above. However, the evidence discloses that no other individuals have been represented by Local 1901 while performing the disputed work for the Employer and that, in general, employees represented by Local 1901, with the exception of some employees at Ocean Stevedoring, apparently do not operate mechanical equipment. Thus, we find that this factor tends to favor an award of the work in dispute to employees represented by Local 1740.

6. Economy and efficiency of operations

Employees represented by Local 1901 work in the yard but do not generally operate mechanical equipment. Employees represented by Local 1740 operate mechanical equipment on the docks. The disputed work involves the operation of mechanical equipment in the yard, including the movement of freight to the yard through the use of heavy equipment. As the yard is located close to the docks and the operation of mechanical equipment requires substantial skill and experience, we find that the factor of economy and efficiency of operations tends to favor an award of the disputed work to employees represented by Local 1740.

cle on recognition that ''[i]n the event that mechanized ships (trailer ships) be brought to Puerto Rico by any of the Companies, the Company shall negotiate with [Local 1901] regarding all the phases of the operation, except the loading and unloading which is covered by contract with [Local 1740], and in such a way it will become a part of this Contract.'' We note that this conditional clause does not specifically refer to the disputed work. Moreover, the record does not disclose any negotiations between the Employer and Local 1901 with respect to the work in dispute.

[10] The operations of the Shipping Association's employers vary greatly in size and are located at various ports in Puerto Rico. In some instances at other employers, employees may be members of both locals at the same time and receive double pay. Thus, our finding on this issue is limited to the Employer.

7. Arbitration awards

The Employer contends that arbitration awards have confirmed that Local 1901's collective-bargaining agreement does not cover mechanical equipment operators. The two arbitration awards submitted into evidence, issued in 1991 and 1995, involve a dispute between Local 1901 and Island Stevedoring, in which the arbitrators each concluded that mechanics represented by Local 1901 were not entitled to perform maintenance and repair work on equipment leased from other companies.[11] However, these awards did not directly involve the Employer or the disputed work in the present case. Accordingly, we find that this factor is not helpful in determining the dispute.

Conclusion

After considering all the relevant factors, we conclude that the employees represented by Local 1740 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference, area and industry practice, relative skills, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Local 1740, not to that Union or its members.

Both the Employer and the Shipping Association appear to have requested that the award cover the operation of mechanical equipment in the yards not only at the Employer's sites but at the sites of every employer-member of the Shipping Association. We find a broad award inappropriate in this case. The Union that we have found reasonable cause to believe has engaged in 8(b)(4)(D) conduct is Local 1740, and it is to the employees represented by Local 1740 that we are awarding the disputed work. In such circumstances, the Board has declined requests for broad awards. See, e.g., *Marble Workers Local 67 (Fisher & Reid Tile Co.)*, 318 NLRB 569, 572 (1995), and cases cited therein. Moreover, the record contains no support for granting a broad order under the factors we traditionally apply. See, e.g, *Sheet Metal Workers Local 66 (Magnolia Contractors)*, 316 NLRB 294, 298 (1995) (evidence of continuing source of controversy in geographic area, evidence that similar disputes are likely to recur, evidence that charging party has a proclivity to violate the Act to obtain work similar to that in dispute). Accordingly, we find that a broad award including all employer-members of the Shipping Association is not warranted and the determination is limited to the controversy that gave rise to this proceeding.

[11] In the 1995 dispute, the Employer supplied the equipment as a lessor but was not a party to the dispute.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Luis A. Ayala Colon, Sucrs., Inc., represented by Union de Trabajadores de Muelles, Local ILA 1740, AFL–CIO, are entitled to perform the work of operating mechanical equipment, including top loaders, shifters, fingerlifts, side picks, and reach stackers, when that equipment is used in the yard and when it is used to receive and deliver containers on land at the Employer's operations in San Juan and Ponce, Puerto Rico.